

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0049P

Sales and Use Tax

Calendar Years 1998, 1999, and 2000

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a manufacturer and a contractor. At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items. Taxpayer's prior audit, completed on October 2, 1992, allowed a penalty waiver. Taxpayer failed to charge sales tax to several customers for whom no exemption certificates could be obtained. Taxpayer also failed to accrue use tax on clearly taxable items such as maintenance supplies, janitorial supplies, smoke detectors, office furniture, and other miscellaneous items. Taxpayer was given credit in the audit for items it erroneously self-assessed use tax.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that it has always made a concerted effort to pay all Indiana taxes in a timely manner and it did not intentionally under pay any taxes due.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence

shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The taxpayer failed to remit sales tax on seventy-seven percent (77%) of its taxable sales and did not assure that its clients had tax exemption certificates. Audit allowed a credit where the taxpayer erroneously self-assessed use tax upon materials billed on a lump sum basis to tax-exempt customers which was in the amount of \$63,847 in use tax. Taxpayer made other errors and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.

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